

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2000-805
December 8, 2000

CENTRAL MAINE POWER COMPANY
Request for Approval of Optional Targeted
Service Rate: Rate SNOW

ORDER

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

SUMMARY OF DECISION

By this Order, the Commission allows Central Maine Power Company's (CMP's or the Company's) proposed Optional Targeted Service Rate: Rate SNOW to be effective as of October 1, 2000. We deny the petitions to intervene of Ski Maine Association and the 17 members of Ski Maine Association (collectively referred to as Ski Maine). We also deny Ski Maine's request to investigate the reasonableness of the proposed Rate Snow, but we direct our staff to conduct an inquiry into the allegations raised by Ski Maine.

BACKGROUND

Since the implementation of CMP's Alternative Rate Plan (ARP) in 1995, the Commission has authorized a pricing flexibility program for CMP pursuant to 35-A M.R.S.A. § 3195(6). The criteria and requirements for CMP's pricing flexibility program at the time of this filing were contained in Revised Attachment F.¹

By Revised Attachment F, CMP may file a proposed new, or proposed changes to an existing, optional targeted service rate schedule with an effective date 30 days from the filing date. CMP must file proposed targeted rates with all persons on a pre-determined service list. Revised Attachment F provides that parties have 14 days to file written comments or objections. The Commission may suspend the effective date of a proposed targeted rate schedule only if it does not conform to the applicable specified criteria and requirements. The Commission's authority to decide whether to suspend special targeted rates or special contracts under Revised Attachment F has been delegated to the Administrative Director.

Since 1994, CMP has been authorized to offer Rate Snow, a special rate for customers that operate skiing facilities. In CMP's view, ski facility operators required a

¹ The ARP pricing flexibility criteria, originally described as Attachment F to the ARP stipulation, were revised and made effective for the post-March 1, 2000 period by our Order in the last ARP annual review (Docket 99-155) on July 13, 1999 and is called Revised Attachment F. With the Order Approving Stipulation issued on November 16, 2000 in Docket 99-666, effective on January 1, 2001, Attachment 6 to ARP 2000 will be used to set CMP's pricing flexibility criteria. The provisions of Attachment 6 are very similar to the provisions of Revised Attachment F.

special rate because diesel generation provided the operators with a less expensive alternative to CMP's standard rate schedules. To reflect changes in the cost of the ski areas' alternatives to taking service from CMP, the rates in Rate Snow have changed each year based on an index tied to the price of diesel fuel. Therefore, the rates under Rate Snow have been effective for only a single ski season, October 1 through the next April 30. The most recent version of Rate Snow expired by its own terms on April 30, 2000.

On September 25, 2000, CMP submitted a request for approval, for the 2000-2001 ski season, of revisions to its "Optional Targeted Service Rate: Rate SNOW." In its filing, however, the Company requested that the Commission "consider the proposed revisions within a 30-day time period and allow the revised rate schedule to be effective October 1, 2000."

By letter dated October 23, 2000, the Director of Technical Analysis recommended that the Administrative Director not suspend CMP's proposed September 25, 2000-revised Rate Snow, because she found that the proposed Rate Snow complies with the relevant criteria of Revised Attachment F. The Administrative Director accepted the Director of Technical Analysis's recommendation and did not suspend the proposed Rate Snow before October 25, 2000.

As the Rate Snow in effect during the 1999-2000 ski season expired on April 30, 2000, CMP apparently seeks the proposed Rate Snow to be effective on October 1, 2000 rather than October 25, 2000, in order to prevent ski operators from lapsing onto the regular retail rate schedule from October 1, 2000 to October 25, 2000.² We agree that the revised Rate Snow should be made effective on October 1, 2000 to avoid forcing the ski operators onto the regular retail rate for the period October 1 to October 25, when some ski operators may have started using snowmaking equipment.³

On October 19, 2000, Ski Maine Association filed a Petition to Intervene, Request for Investigation and Motion to Continue the 1999-2000 Rate Snow in Effect as a Temporary Rate.⁴ Based on CMP's analysis, it appears that under CMP's proposed

² The Administrative Director was not delegated the authority to allow targeted rates or special contracts to become effective before the 30-day filing period has elapsed.

³ It appears that certain customers that previously took service under Rate Snow may now be better off taking service under the regular retail rate. As a condition of allowing this rate schedule to go into effect prior to the end of the 30-day period, we require CMP to allow any such customers to take service under the retail rate during the period October 1 through October 25, 2000.

⁴ On October 23, 2000, the members of the Ski Maine Association, Big Squaw Mountain Resort, Bigrock Ski Area/Quoggy Jo, Black Mountain, Camden Snowbowl, Eaton Mountain, Lonesome Pine Trails, Lost Valley, Mt. Abram, Mt. Jefferson Ski Area, New Hermon Mountain, Saddleback Ski Area, Seacoast Snow Park, Shawnee Peak, Sugarloaf/USA, Sunday River Ski Resort and Titcomb Mountain, filed almost identical

Rate Snow, ski areas would pay between 50% and 80% more for bundled electricity service than they did under the rates in effect last October. Ski Maine alleges that the proposed Rate Snow increases will place many of Maine's ski areas in financial peril.

Ski Maine requests the Commission investigate the proposed Rate Snow and find the rate to be unjust and unreasonable. Ski Maine alleges the new rate is unjust and unreasonable because CMP waited to propose the substantial rate increase until the ski operators could not realistically choose an alternative to CMP-delivered electricity for this ski season. Moreover, according to Ski Maine, although CMP's analysis to support the new rates is confidential, the extreme spike in the rate suggests that CMP departed from the traditional methodology of basing Rate Snow on long-term fuel forecasts, and instead relied on current short-term price spikes to calculate the rate. As ski operators would base their decisions to bypass the electric grid on long-term fuel forecasts, Ski Maine asserts that CMP should have used long-term forecasts to calculate the new Rate Snow. Ski Maine urges the Commission to order CMP to substitute a just and reasonable Rate Snow for the one proposed by CMP on September 25. Pending the conclusion of the investigation, Ski Maine asks the Commission to order the 1999-2000 Rate Snow to remain in effect, using our authority under 35-A M.R.S.A. § 1321.

DECISION

We turn first to the petitions to intervene. CMP proposes the revised Rate Snow as part of the pricing flexibility program in effect since 1995. The terms of that program are set in Revised Attachment F and Attachment 6 to ARP 2000. By those terms, the Commission can suspend an optional targeted rate or special contract only if the proposed rate or contract fails to meet the relevant criteria and requirements. The Commission has already found that the proposed Rate Snow meets the criteria and requirements. None of the allegations made by Ski Maine, even if accepted as true, provides a basis for changing our finding that the proposed Rate Snow meets the relevant criteria. By the program requirements the Commission has set, there is no basis for the Commission to suspend the proposed Rate Snow, and therefore no proceeding in which intervention can be permitted.

Intervention is permitted only in adjudicatory proceedings. See 5 M.R.S.A. § 9054; Chapter 110, § 7(2). An adjudicatory proceeding means a Commission proceeding in which the rights and duties of a person are required by constitutional law or statute to be determined after an opportunity for hearing. 5 M.R.S.A. § 8002(1); Chapter 110, § 105(a). A right to a hearing when CMP proposes an optional targeted rate, if one exists at all, arises only when the Commission suspends the rate from becoming effective.

The same treatment is accorded the filing of a standard retail rate schedule. By 35-A M.R.S.A. § 307, the new rate must be made effective no earlier than 30 days after filing. During the 30 days, the Commission must decide whether to suspend and investigate the new rate. 35-A M.R.S.A. § 310. When suspended, a right to a hearing

accrues, making the resulting investigation an adjudicatory proceeding. No opportunity for a hearing is required before the Commission decides whether to suspend a rate schedule, and that decision is, therefore, a non-adjudicatory matter.

Thus, even assuming that the question of whether to suspend the newly proposed Rate Snow were still pending, this would not be an adjudicatory proceeding. As a non-adjudicatory matter, intervention is not allowed. Accordingly, we deny the petitions to intervene of Ski Maine Association and the individual members of the Association.

At the present time, we decline to open a formal investigation into the matters raised by Ski Maine and its members. Rate Snow is part of CMP's pricing flexibility program, in place since 1995 and to remain in place as we now enter into a new rate plan, ARP 2000, for CMP. The purpose of the program is to provide CMP the flexibility to price its product between the rate plan caps and the marginal cost floors, in a way that CMP believes will maximize its revenue. Because of the rate plans, so-called "captive customers," or customers that do not receive discounts, are protected if CMP fails to maximize its revenue, by either discounting more or less than the optimal level (unless loss-sharing is triggered under the rate plan). For the rate plan and pricing flexibility program to be successful, however, CMP must have the flexibility to decide the issues raised by Ski Maine and its members, such as the true cost of the ski operators' alternatives to the electric grid and the accuracy of CMP's assessment of the economic circumstances of the ski industry in Maine. Otherwise, the benefits of incentive ratemaking will not be achieved.

CMP's discretion, however, in operating its pricing flexibility, is not without some limitations. Ski Maine alleges that CMP's actions led the ski operators to believe the 2000-01 Rate Snow would not be radically different from the 1999-2000 Rate Snow. The ski operators have now passed up the opportunity to install self-generation for the current season. As it is too late to install generation equipment for this season, Ski Maine suggests that equity requires CMP be stopped from such a substantial increase compared to last year's Rate Snow.

While we can agree that some actions by CMP could be so inequitable as to justify a formal investigation by the Commission, including an investigation of possible remedies if we concluded CMP engaged in unfair practices, we will not open a formal investigation based upon allegations alone.⁵ The allegations raised by Ski Maine are serious enough, however, that we will direct our Staff to conduct an inquiry. The Staff should inquire about the communications between CMP and ski operators that led the ski operators to believe that the 2000-2001 Rate Snow would not be substantially different from the 1999-2000 Rate Snow. The inquiry should also determine whether CMP agrees or disagrees with the ski operators' descriptions of the communications between the ski operators and CMP. After the inquiry, we will decide whether any further action is proper. As we decline to open a formal investigation, we will not

⁵ Cf. *Bangor Hydro-Electric Company, Proposed Tariff for Space Heating Rate*, Docket No. 2000-435 (Nov.14, 2000) (tariff changes of discounted space heat rate limited by Commission).

address the request to impose last year's Rate Snow pending the final decision of whether to open such a formal investigation.

Accordingly, we

O R D E R

1. That Central Maine Power Company's proposed revisions to its Optional Targeted Service Rate: Rate Snow, filed by the Company on September 25, 2000 are made effective on October 1, 2000;
2. That the petitions to intervene on behalf of Ski Maine Association and its individual members are denied;
3. That the Commission Staff is directed to conduct an inquiry as described in this Order; and
4. That the request, pursuant to 35-A M.R.S.A. § 1303, to open an investigation into the justness and reasonableness of proposed Rate Snow is denied, pending the inquiry described above.

Dated at Augusta, Maine, this 8th day of December, 2000.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

Commissioners Voting For: Welch
Nugent
Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.